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MINISTRY OF LAW

(Legislative Department)

New Delhi, the 19th September, 1960/*Bhadra* 28, 1882 (*Saka*)

The following Act of Parliament received the assent of the President on the 19th September, 1960, and is hereby published for general information:—

THE BANKING COMPANIES (SECOND AMENDMENT) ACT, 1960

No. 37 OF 1960

[19*th September*, 1960]

An Act further to amend the Banking Companies Act, 1949.

BE it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Banking Companies (Second Amendment) Act, 1960.

Amendment of section 39.

10 of 1949.

2. In section 39 of the Banking Companies Act, 1949 (hereinafter referred to as the principal Act), for the words "notified by the Central Government in this behalf, as stated in such application shall be appointed as the official liquidator of the banking company in such proceeding", the words "notified by the Central Government in this behalf or any individual, as stated in such application shall be appointed as the official liquidator of the banking company in such proceeding and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment" shall be substituted.

Substitution of new sections for section 41.

3. For section 41 of the principal Act, the following sections shall be substituted, namely:—

Preliminary report by official liquidator.

"41. Notwithstanding anything to the contrary contained in section 455 of the Companies Act, 1956, where a winding-up order has been made in respect of a banking company whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960, the official liquidator shall submit a preliminary report to the High Court within two months from the date of the winding-up order or where the winding-up order has been made before such commencement, within two months from such commencement, giving the information required by that section so far as it is available to him and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of two months in order that such assets may be applied speedily towards the making of preferential payments under section 530 of the Companies Act, 1956, and in the discharge, as far as possible, of the liabilities and obligations of the banking company to its depositors and other creditors in accordance with the provisions hereinafter contained; and the official liquidator shall make for the purposes aforesaid every endeavour to collect in cash as much of the assets of the banking company as practicable. 1 of 1956. 1 of 1956.

Notice to preferential claimants and secured and unsecured creditors.

41A. (1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960, within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon—

(a) every claimant entitled to preferential payment under section 530 of the Companies Act, 1956, and 1 of 1956.

(b) every secured and every unsecured creditor,

to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

(2) Every notice under sub-section (1) sent to a claimant having a claim under section 530 of the Companies Act, 1956, 1 of 1956. shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month

from the date of the service, the claim shall not be treated as a claim entitled to be paid under section 530 of the Companies Act, 1956, in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under section 530 of the Companies Act, 1956, in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.".

1 of 1956.

4. For section 43A of the principal Act, the following section shall be substituted, namely:— **Substitution of new section for section 43A.**

"43A. (1) In every proceeding for the winding-up of a banking company where a winding-up order has been made, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960, within three months from the date of the winding-up order or where the winding-up order has been made before such commencement, within three months therefrom, the preferential payments referred to in section 530 of the Companies Act, 1956, in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in section 41A, shall be made by the official liquidator or adequate provision for such payments shall be made by him. **Preferential payments to depositors.**

1 of 1956.

(2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months—

(a) in the first place, to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter,

(*b*) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less,

in priority to all other debts from out of the remaining assets of the banking company available for payment to general creditors:

Provided that the sum total of the amounts paid under clause (*a*) and clause (*b*) to any one person who in his own name (and not jointly with any other person) is a depositor in the savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.

(*3*) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under clause (*a*) or clause (*b*) of sub-section (*2*) with the assets in cash, the official liquidator shall pay within that period to every depositor under clause (*a*) or, as the case may be, clause (*b*) of that sub-section on a *pro rata* basis so much of the amount due to the depositor under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the official liquidator in cash.

(*4*) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilised for payment on a *pro rata* basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a *pro rata* basis as aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a *pro rata* basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (*a*) and clause (*b*) of sub-section (*2*).

(*5*) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator—

(*a*) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value; and

(*b*) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

Provided that where the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court for making a valuation.

(*6*) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the foregoing provisions, cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.

(7) For the purposes of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:—

(*a*) payments to preferential claimants under section 530 of the Companies Act, 1956;

1 of 1956.

(*b*) payments under clause (*a*) of sub-section (*2*) to the depositors in the savings bank account;

(*c*) payments under clause (*b*) of sub-section (*2*) to the other depositors;

(*d*) payments to the general creditors and payments to the depositors in addition to those specified in clause (*a*) and clause (*b*) of sub-section (*2*).

(*8*) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.".

Amendment of section 44A.

5. In section 44A of the principal Act, after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(7) Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies in national interest under section 396 of the Companies Act, 1956:

1 of 1960

Provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.".

Insertion of new section 45.

6. Section 45 of the principal Act shall be re-numbered and lettered as section 44B of that Act and after that section as so re-numbered and lettered, the following section shall be inserted in Part III of the principal Act, namely:—

Power of Reserve Bank to

"45. (*1*) Notwithstanding anything contained in the foregoing provisions of this Part or in any other

Apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.

law or any agreement, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of the banking company.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (*1*), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(*3*) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (*2*) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

(*4*) During the period of moratorium, if the Reserve Bank is satisfied that—

(*a*) in the national interest; or

(*b*) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(*d*) in the interests of the banking system of the country as a whole,

it is necessary so to do, then, notwithstanding anything contained in this Act or in any other law or any agreement or instrument for the time being in force, the Reserve Bank may prepare a scheme—

(*i*) for the reconstruction of the banking company, or

(*ii*) for its amalgamation with another banking company,

with such constitution, with such capital, assets, powers, rights, interests, authorities and privileges, with such liabilities, duties and obligations and on such terms and conditions as may be specified in the scheme.

(*5*) The scheme may provide for the appointment of a new Board of directors—

(*a*) of the banking company on its reconstruction, or

(*b*) of the other banking company with which it is amalgamated in accordance with the scheme,

and the authority by whom, the manner in which, the period for which, and the other terms and conditions on which, such appointment shall be made, shall be as provided in the scheme.

(6) The scheme aforesaid may contain such consequential, incidental and supplemental provisions as may, in the opinion of the Reserve Bank, be necessary to give effect to the reconstruction, or, as the case may be, the amalgamation, and may also provide for the reduction of the interest or rights which the members or creditors have in or against the banking company before its reconstruction or its amalgamation with the other banking company, to such extent as the Reserve Bank considers necessary in the public interest or in the interests of the members and creditors or for the maintenance of the business of the banking company.

(7) (*a*) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and in the case of amalgamation, also to the other banking company with which it is proposed to be amalgamated for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose; and

(*b*) the Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company or in the case of amalgamation, from both the banking companies or from any members or creditors thereof.

(8) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may think necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf and shall, as from that date, be binding on the banking company or companies concerned and also on all the members and creditors thereof.

(9) Copies of every scheme made under this section shall be laid before both Houses of Parliament as soon as may be after the scheme has come into force.".

Amendment of section 45L.

7. In section 45L of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) Where a scheme of reconstruction of a banking company or its amalgamation with another banking company has been sanctioned by the Central Government under section 45 and the Central Government is of opinion that any person who

has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that that person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the Central Government shall make an order that that person shall not, without the leave of the Central Government, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

(4) Where a scheme of reconstruction of a banking company or its amalgamation with another banking company has been sanctioned by the Central Government under section 45, the provisions of section 543 of the Companies Act, 1956, and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding-up of the banking company; and any reference in the said section 543 to the application of the official liquidator shall be construed as a reference to the application of the Central Government.". 1 of 1956.

Amendment of section 50.

8. In section 50 of the principal Act, for the word and figures "and 36", the figures, letter and word "36, 43A and 45" shall be substituted.

Amendment of section 51.

9. In section 51 of the principal Act, for the figures "45", the figures and letter "44B" shall be substituted.

Certain winding-up proceedings to be governed by original provisions.

10. The amendments made in the principal Act by section 3 and section 4 shall not apply to, and in relation to, the winding-up of a banking company where any preliminary dividend has been paid in the course of such winding-up before the commencement of this Act, but the provisions of the principal Act as they stood immediately before such commencement shall apply to, and in relation to, such winding-up.

R. C. S. SARKAR, Secy.

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